HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT APPEAL No. 142 OF 2007

Between:

Datharu Pochaiah & others

.... Appellants

AND

Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue Department,
Hyderabad & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri Bojja Tarakam,
Senior Counsel assisted by
Shri V. Raja Manohar

Counsel for the respondents : Government Pleader for
Land Acquisition

Dated: 08.02.2007

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 08.11.2006 passed by the learned Single Judge, whereby he summarily dismissed the writ petition filed by the appellants questioning the legality of notice dated 08.11.2005 issued by Revenue Divisional Officer, Bhongir under Sections 9(1) and 10 of the Land Acquisition Act, 1894 (for short 'the Act').

In the writ petition filed by them, the appellants challenged the proceedings initiated by respondent Nos. 2 to 4 primarily on the ground that they were sought to be deprived of their property without following the procedure prescribed under the Act.

It is borne out from the record that the learned Single Judge did not issue formal notice to the official respondents requiring them to file counter-affidavit to admit or deny the averments contained in the affidavit of appellant No.1 –Datharu Pochaiah, but dismissed the writ petition only on the basis of oral statement made by the learned Government Pleader for Land Acquisition that notification under Section 4(1) of the Act was issued on 08.11.2005; that declaration under Section 6 was issued on 09.11.2005; that an award was passed on 02.06.2006 and that as all the persons interested had not come forward to claim the compensation, the amount was deposited under Section 30 of the Act in O.P.No.1 of 2006 in the civil Court. In the opinion of the learned Single Judge, once an award is passed, the challenge to the notice issued under Sections 9(1) and 10 of the Act

cannot be entertained.

We have heard Shri B. Tarakam, learned Senior Advocate appearing for the appellants and learned Government Pleader for Land Acquisition. In our opinion, the writ petition filed by the appellants questioning the acquisition of their land, which appears to be the only source of their livelihood, could not have been dismissed by the learned Single Judge summarily and that too without calling upon the respondents to file a counter affidavit.

The question whether the land in dispute had been acquired by the competent authority after following the procedure prescribed under Section 4(1) read with Section 6 could have been properly adjudicated by the learned Single Judge only after perusing the affidavits of the parties and going through the records.

Shri B. Tarakam emphasized that the initial notice had not been published as per the requirement of Section 4(1) and no notice was given to any of the appellants about the proposed acquisition. He referred to notice dated 08.11.2005 to show that till that stage, the government was only contemplating to acquire the land belonging to the petitioner and submitted that neither any notification had been published under Section 4(1) nor any declaration was issued under Section 6 of the Act.

In the context of the argument of Shri B. Tarakam, we enquired from the learned Government Pleader for Land Acquisition whether any enquiry was made under Section 5-A of the Act after giving notice to the affected persons to file their cause/objections. In reply, the learned Government Pleader stated that enquiry under

Section 5-A of the Act was not held because the competent authority decided to invoke the urgency clause contained in Section 17 of the Act.

The aforesaid statement of the learned Government Pleader is sufficient to further compound the grievance of the appellants, who were sought to be deprived of their property and the only source of livelihood without even being told of the cause for acquisition and without being afforded an opportunity to challenge the acquisition proceedings.

The observation made by the learned Singe Judge that a writ petition cannot be entertained after passing of the award is sought to be supported by the learned Government Pleader for Land Acquisition by placing reliance on the judgment of the Supreme Court in **Municipal Council, Ahmednagar v. Shah Hyder Beig**[1]. We have carefully gone through the judgment, but are unable to find any ratio which supports the observation of the learned Single Judge. The factual matrix of that case shows that the writ petitioner (respondent before the Supreme Court) had challenged the acquisition proceedings after 16 years of the passing of the award. In that background, the Supreme Court observed that the writ petition was not maintainable. Whether the appellants herein have been able to make out a case for interference under Article 226 of the Constitution of India is required to be decided in the background of the facts brought on the record of the case and no general or sleeping observation could possibly be made that the writ petition is not maintainable.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the writ

petition is remitted for fresh adjudication. The respondents are directed to file counter-affidavit within seven days together with copies of notification issued under Section 4(1) and declaration issued under Section 6 of the Act. The appellants may, if so advised, amend the writ petition within next seven days for challenging the very initiation of acquisition proceedings and notification issued under Section 4(1) and declaration issued under Section 6.

The writ petition be listed for final adjudication before an appropriate Bench on 01.03.2007. Till then, the parties shall maintain status quo as it is obtaining today.

As a sequel to disposal of the main appeal, W.A.M.P.No.220 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

08.02.2007
ksld

-

[1] AIR 2000 SC 671